TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. [illegible]/86

ALFRED H. LEE, PLAINTIFF IN ERROR,

vs.

STEPHEN P. SMITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED [illegible], 1886.

SUPREME COURT OF THE UNITED STATES.

No. 403.

ALFRED H. LEE, PLAINTIFF IN ERROR,

vs.

STEPHEN P. SMITH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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A CIRCUIT COURT OF THE UNITED STATES,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Stephen P. Smith, plaintiff, and Alfred H. Lee, defendant, a manifest error hath happened to the great damage of the said Alfred H. Lee, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of May, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second year.

[SEAL] WM. H. BRADLEY, *Clerk.*

(Indorsed:) Circuit court of the United States, northern district of Illinois. Stephen P. Smith vs. Alfred H. Lee. Writ of error.

B UNITED STATES OF AMERICA, *ss:*

To Stephen P. Smith, greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and northern district of Illinois, wherein Alfred H. Lee is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas Drummond, one of the judges of the circuit court of the United States for the northern district of Illinois, the first day of July, in the year of our Lord one thousand eight hundred and sixty eight.

THOMAS DRUMMOND.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

John H. Tolman, being duly sworn, says that he served the within citation upon the within named defendant in error, by delivering a true copy thereof to George F. Harding, esq., the attorney of said defendant in error, at his office, in the said city of Chicago, on the 28th day of September, A. D. 1868.

JOHN H. TOLMAN.

Subscribed and sworn to before me this 28th day of September, A. D. 1868.

[SEAL] GEORGE CHANDLER,
Notary Public.

(Indorsed:) Supreme Court of the United States. Alfred H. Lee vs. Stephen P. Smith. Citation.

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room, in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis, one of the justices of the Supreme Court of the United States, sole judge of said circuit court, on Tuesday, the twenty-eighth day of April, in the March term of said court, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-second year.

WM. H. BRADLEY, *Clerk.*

STEPHEN P. SMITH
vs.
ALFRED H. LEE. } In ejectment.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the sixth day of November, in the year of our Lord one thousand eight hundred and sixty-seven, came Ste-
2 phen P. Smith, by his attorney, George F. Harding, who filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in the district aforesaid, his declaration in ejectment against Alfred H. Lee, defendant, together with a notice and affidavit thereto attached, and also at the same time filed his bond for costs in said entitled cause, which said bond, declaration, notice, and affidavit are in the words and figures following, to wit:

Bond for costs.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Circuit court, October term, A. D. 1867.

SMITH
vs.
LEE. } In ejectment.

I hereby enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by
3 the plaintiff of any costs ordered or adjudged to be paid by, I hereby agree and stipulate that execution may issue against my property for any costs taxed against the plaintiff.

Dated this 30 day of October, A. D. 1867.

A. McCOY.

(Endorsed:) Filed Nov. 6th, A. D. 1867.

WM. H. BRADLEY, *Clerk.*

Declaration.

STATE OF ILLINOIS, *Warren County, ss:*

In the United States circuit court, northern district of Illinois, of Oc-

tober term, in the year of our Lord one thousand eight hundred and sixty-seven, Stephen P. Smith, who is a resident & citizen of the State of Iowa, plaintiff, by George F. Harding, his attorney, comes and complains of Alfred H. Lee, defendant, who is a resident & citizen of the State of Illinois, who is notified by notice and copy of the declaration, according to the statute in a plea of ejectment.

For that whereas the said plaintiff, on the 23d day of October,
4 in the year of our Lord one thousand eight hundred and sixty-seven, was possessed of that certain tract of land, with the appurtenances, situate in the said district in the said county, and known, designated, and described as follows, viz:

The southeast quarter of section twenty-two, (22,) in township ten (10) north, in range two (2) west, which said premises the said plaintiff claims in fee simple; and the said plaintiff being so possessed thereof, the said defendant afterwards, to wit, on the 23d day of October, in the year of our Lord one thousand eight hundred and sixty-seven, entered into the said premises, and ejected the said plaintiff therefrom, and unjustly withholds from the said plaintiff the possession thereof, to the damage of said plaintiff of five hundred dollars, and plaintiff avers that said land exceeds in value five hundred dollars, & therefore he brings suit, etc.

GEO. F. HARDING,
Attorney for Plaintiff.

To Alfred H. Lee, the above-named defendant:

5 You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the United States circuit court for said northern district of Illinois, on the 30th day of the October term, 1867; that, upon filing the same, a rule will be entered, requiring you to appear and plead to the said declaration within twenty days after the entry of such rule; and that if you neglect so to appear and plead, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 23 day of October, A. D. 1867.

GEO. F. HARDING,
Attorney for Plaintiff.

STATE OF ILLINOIS, *Warren County, ss:*

James M. Harris, constable, being sworn, says that he served the within declaration & notice upon Alfred H. Lee, the within-named
6 defendant, on the 23rd day of October, A. D. 1867, by delivering to said defendant a copy of said declaration & notice.

JAMES M. HARRIS.

Sworn & subscribed before me this 24th Oct., A. D. 1867.
[SEAL.] THOS. M. SUSTER.
Clk Cir. Ct Warren Co., Ills.

(Endored:) Filed Nov. 6, 1867.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the sixth day of November, in the October term, A. D. 1867, in the record of said court, in the above-entitled cause, is the following entry, to wit:

Rule to Plead.

STEPHEN P. SMITH } Ejectment.
vs.
ALFRED H. LEE. }

Now comes the plaintiff, by George F. Harding, esq., his attorney, who files his declaration in ejectment against the defendant, together with a notice thereto attached, and also an affidavit of due service of a true copy of said declaration and notice upon the defendant; and on
7 motion of the plaintiff's attorney, it is ordered by the court that said cause be docketed, and the defendant ruled to plead within twenty days, or that his default be entered.

And on this day, to wit, the sixteenth day of November, A. D. 1867, came the defendant, by Messrs. Goudy & Chandler, his attorneys, who filed in said court his plea in the above-entitled cause; which said plea is in the words & figures following, to wit:

Plea.

Circuit court of the United States, northorn district of Illinois.

STEPHEN P. SMITH } Ejectment.
vs.
ALFRED H. LEE. }

And now comes the said defendant, by Goudy & Chandler, his attorneys, and defends the force and injury, when, &c., and says that he is not guilty of unlawfully withholding from said plaintiff the possession of the said premises, in said plaintiff's declaration described, in manner and form as the said plaintiff has above thereof complained against
8 him, and of this he puts himself upon the country, &c.

GOUDY & CHANDLER,
Att'ys for Defendant.

Endorsed: Filed Nov. 16th, 1867.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the nineteenth day of February, A. D. 1868, in the December term, A. D 1867, in the record of said court in the above-entitled cause, is the following entry, to wit:

Verdict.

STEPHEN P. SMITH } Ejectment.
vs.
ALFRED H. LEE. }

The court having considered, and being now fully advised upon the motion of the defendant upon affidavit filed for a continuance of this cause, overrules the same; and now comes the plaintiff, by his attorney, and moves the court that a jury be empannelled to try the issue joined upon the plea of the defendant filed herein. It is thereupon considered by
9 the court that a jury come to try said issue. And thereupon come a jury of good and lawful men, to wit: Warren Hill, Giles W. Slocum, George E. Timme, and J. R. Walker, Morgan L. Keith, E. H. Brookner, B. F.

Burr, H. H. Hilldreth, Cornelius Guild, Isaiah Williams, William Mitchell, and L. Beorley, who were all duly elected, tried, and sworn well and truly to try said issue; and after hearing the evidence and receiving the instructions of the court, the jury returned into court the following verdict, to wit:

We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration, as follows:

That certain tract of land, with the appurtenances, situate in the said district in the said county of Warren, and known and described as follows, viz: The southeast quarter of section twenty-two, (22,) in township ten (10) north, in range two (2) west. We also find the estate established in the plaintiff on the trial to be an estate in fee simple, and assess his damages to the sum of one cent.

10 It is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant possession of the said real estate and premises above described, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor; and that he also have and recover of the defendant the said sum of one cent, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

Judgment set aside & new trial granted.

And on this day, to wit, the third day of March, in the March term A. D. 1868, in the record of said court in the above-entitled cause is the following entry, to wit:

STEPHEN P. SMITH *vs.* ALFRED H. LEE. } Ejectment.

11 The motion of the defendant, heretofore made upon affidavit filed to stay the issuance of the writ of possession upon the judgment recovered herein, is overruled by the court, nunc pro tunc as of yesterday; and now comes the defendant, by his attorney, and moves the court to set aside and vacate the judgment rendered herein on the nineteenth day of February last, to reinstate said cause upon the docket, and for a new trial of the same under the statute; and it appearing to the court that all the taxed costs herein have been paid by the defendant, it is thereupon ordered by the court that said judgment be set aside and vacated, the cause reinstated upon the docket, and a new trial of the same awarded under the statute.

Verdict.

On this day, to wit, the eighth day of April, in the March term, A. D. 1868, in the record of said court, in the above-entitled cause, is the following entry, to wit:

STEPHEN P. SMITH *vs.* ALFRED H. LEE. } Ejectment.

12 Now come the parties by their attorneys, and upon issue joined thereupon come a jury of good and lawful men, to wit: Smith McClevy, J.

Breckinridge, H. B. Hart, Daniel Squiers, F. Gunnell, P. Van Allen, Sylvanus H. Kellogg, John W. Johnston, W. H. Riley, E. L. O. Hara, A. White, and Julius M. Warren, who were all duly elected, tried, and sworn, well and truly to try said issue; and after hearing the evidence and receiving the instructions of the court, the jury returned into court the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration as follows, to wit: That certain tract of land, with the appurtenances, situate in the said district in the said county, and known and designated and described as follows, viz: The southeast quarter of section twenty-two, (22,) in township ten (10) north, in range two (2) west. We also find the estate established in the plaintiff on the trial to be an estate in
13 fee simple, and assess his damages to the sum of one cent; and thereupon the defendant, by his attorney, moves the court for a new trial herein.

On this day, to wit, the twenty-eight day of April, in the March term, A. D. 1868, in the record of said court in the above entitled cause is the following entry, to wit:

Judgment.

STEPHEN P. SMITH
vs.
ALFRED H. LEE. } Ejectment.

Now come the parties by their attorneys, and now comes on to be heard the motion of the defendant heretofore entered herein for a new trial of this cause; and after hearing the arguments of counsel, the court overrules said motion.

It is thereupon considered and adjudged by the court that the said plaintiff do have and recover of the said defendant possession of the real estate and premises aforesaid described, according to the force, form, and effect of his said recovery, and that he have a suit of posses-
14 sion therefor, and that he also have and recover of the defendant the said sum of one cent, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of thirty-two dollars and eighty-five cents, and that he have execution therefor; and it is ordered by the court that said judgment be suspended ten days.

15 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said district, do hereby certify the above and foregoing to be a true, correct, and complete transcript from the records of said court, of the bond for costs, the declaration with notice and affidavit attached, the plea, and all the orders of said court entered of record in said entitled cause of Stephen P. Smith, plaintiff, and Alfred H. Lee, defendant, as the same remains of record in my custody.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office, in the city of Chicago, this twenty-first day of December, in the year of our Lord one thousand eight hundred and sixty-eight, and of our independence the ninety-third year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-ct. int. rev. certificate cancelled: W. H. B., Dec'r 21, 1868.]

Supreme Court of the United States.

ALFRED H. LEE, plaintiff in error,
vs.
STEPHEN P. SMITH.

ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

This brief is filed in pursuance of rule No. 21, for the purpose of bringing this cause to a hearing.

It is apparent from the record that no writ of error bond, or bond for costs, or supersedeas bond, has been filed in the case, and consequently the cause is not properly in this court, no writ of error having been ordered or granted by the circuit court. I suppose, therefore, that the case is improperly in this court, and that the writ of error will be dismissed.

The value of the land in controversy is not shown so as to give this court jurisdiction. (Winston *vs.* United States, 3 How., 791.)

No brief has been filed for the plaintiff in error. No error is assigned, and no points made and insisted upon, and as I fail to discover any error in the record, I have no points to submit in the case; and if, for any reason, the motion to dismiss the writ of error shall not prevail, I desire this to stand for my brief in the final hearing, unless the plaintiff in error shall file a brief which may need reply.

B. C. COOK,
Counsel for Defendant in Error.